

In The Matter Of:

*Babcock Borsig Power GmbH v.
Babcock Power Inc. v. Babcock Borsig AG*

*James F. Wood
Vol. 1, January 16, 2006*

VIDEOTAPED

*Doris O. Wong Associates, Inc.
Professional Court Reporters
50 Franklin Street
Boston, MA 02110
(617) 426-2432*

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Word Index included with this Min-U-Script®

Page 1

Volume I
 Pages 1 to 236
 Exhibits 1 to 21

UNITED STATES DISTRICT COURT
 FOR THE DISTRICT OF MASSACHUSETTS
 BABCOCK BORSIG POWER GmbH, :

Plaintiff, :
 vs. : Civil Action
 : No. 04 CV
 BABCOCK POWER INC., : 01825-RWZ
 Defendant and :
 Third-Party Plaintiff, :
 vs. :
 BABCOCK BORSIG AG, :
 Third-Party Defendant. :

VIDEOTAPED DEPOSITION OF JAMES F. WOOD, a
 witness called on behalf of the Plaintiff and
 Third-Party Defendant, taken pursuant to the Federal
 Rules of Civil Procedure, before Carol H. Kusnitz,
 Registered Professional Reporter and Notary Public
 in and for the Commonwealth of Massachusetts, at the
 Offices of Bello Black & Welsh LLP, 535 Boylston
 Street, Suite 1102, Boston, Massachusetts, on
 Monday, January 16, 2006, commencing at 11:15 a.m.

PRESENT:
 Bello Black & Welsh LLP (by Kenneth M. Bello,
 Esq., and John F. Welsh, Esq.) 535 Boylston
 Street, Suite 1102, Boston, MA 02116, for
 the Plaintiff and Third-Party Defendant.

(Continued on Page 2)

Page 2

PRESENT (Continued):

Goodwin Procter LLP (by Steven J. Comen, Esq.,
 and James O. Fleckner, Esq.) Exchange
 Place, Boston, MA 02109, for the Defendant
 and Third-Party Plaintiff.

Also Present: Wayne Martin, Videographer
 Jason Moschella, Videographer
 Georg-Peter Kraenzlin

Page 3

INDEX

WITNESS DIRECT CROSS REDIRECT RECROSS

JAMES F. WOOD

BY MR. BELLO 7

EXHIBITS

NO.	DESCRIPTION	PAGE
1	Document entitled "Plaintiff Babcock Borsig Power GmbH's First Request to Defendant Babcock Power Inc. For Production of Documents," dated June 8, 2005	19
2	Termination letter from Babcock Borsig AG to James F. Wood dated August 29, 2002	53
3	Two-page letter from Babcock Borsig Power GmbH to James F. Wood dated September 2, 2002	56
4	Memo from Ludger Kramer to Senior Management of Babcock Borsig Capital Corporation dated September 25, 2002, Bates No. BPI 01218	83
5	Printout of e-mail from Lorraine Wile to B. Crush, et al., dated 10/4/02, with attached memo from Jim Brantl to Brian Crush and Jeff Stoler of the same date, Bates Nos. BPI 09882 and 07714-716	114
6	Printout of e-mail from Lorraine Wile to B. Crush, et al., dated 10/8/02, with attached memo from Jim Brantl to Brian Crush and Jeff Stoler of the same date, Bates Nos. BPI 09886-887	114

Page 60

to Germany.
[2] Q: Where in this memo does it —
[3] A: It doesn't.
[4] Q: It does not say that. So was this — was
[5] the top of Page 2 just simply made up, in your view,
[6] sir?
[7] A: The top of Page 2 is not an accurate
[8] reflection of the meeting that we had in Oberhausen.
[9] Q: Is there anything in this document that
[10] says this is a summary of the action items in
[11] Oberhausen?
[12] A: I didn't read anything that said that.
[13] Q: What did you understand your role to be,
[14] sir, in connection with effecting the sale of BBCC
[15] to a prospective buyer?
[16] A: I think I — I reflected that my role
[17] changed.
[18] Q: Well, let's start — when did it — if it
[19] changed, let's start from the beginning and move to
[20] when it changed. What was your initial role? What
[21] did you understand your initial role to be in
[22] connection with the potential sale of BBCC?
[23] A: My initial role was in connection with the
[24] sale of all of BBCC to an interested buyer.

Page 61

[1] Q: And what was your role to be, sir, in doing
[2] that?
[3] A: That I would be the representative of BBCC
[4] and BBCC management, that I would make the
[5] presentations to interested parties, and that I
[6] would represent that the material that BBCC put
[7] forward as part of the sale was accurate material.
[8] Q: Was there a period of time that you
[9] maintained — you understood that that was your
[10] role?
[11] A: Yes.
[12] Q: From when to when?
[13] A: From the beginning that I — well, from
[14] September of 2001, when I joined the company, until
[15] July of 2002, when the parent filed for insolvency.
[16] Q: And did someone communicate a change in
[17] role to you following July of 2002?
[18] A: In fact — in fact, the reason we went to
[19] the meeting in Frankfurt was to try and find out
[20] what our role was. There was little communication
[21] at all with the new management.
[22] Q: Did someone at some point communicate to
[23] you what your role was to be?
[24] A: No.

Page 62

[1] Q: Never?
[2] A: No.
[3] Q: So is it fair to say from July 2002 to
[4] November 29, 2002, you had no understanding of your
[5] role? Is that your testimony?
[6] MR. COMEN: I'm sorry. I object.
[7] MR. BELLO: That's okay.
[8] MR. COMEN: No understanding — did you
[9] finish the question?
[10] MR. BELLO: Well, you objected before I
[11] could even think whether I finished the question.
[12] MR. COMEN: Could you read the question
[13] before that —
[14] MR. BELLO: I'll just ask him the question.
[15] Q: I'll ask it again, sir.
[16] Is it fair to say that it's your testimony
[17] that between July 2002 and November 29, 2002, you
[18] had no understanding of your role in connection with
[19] the sale of BBCC?
[20] MR. COMEN: I object.
[21] A: No.
[22] Q: Did you have any understanding of your role
[23] in connection with the sale between those two dates?
[24] A: Yes.

Page 63

[1] Q: What was the basis of your understanding?
[2] A: My experience in operation of businesses of
[3] this type and my ability to represent these
[4] businesses as solvent and profitable businesses.
[5] Q: Other than — other than your experience
[6] and ability — did you have any communication with
[7] anyone reflecting the nature of your role in
[8] connection with the sale between July 2002 and
[9] November 29, 2002?
[10] A: Could you restate that question, please.
[11] Q: Sure. You've identified your experience
[12] and your ability. What I'm asking you is, did you
[13] have communication with anyone in management of the
[14] owner or otherwise responsible for the disposition
[15] of BBCC regarding your role and responsibilities in
[16] connection with the potential sale between July 2002
[17] and November 29, 2002.
[18] A: Two thousand —
[19] Q: — two.
[20] A: — two. I can't recall any specific, no.
[21] Q: How about anything general, sir?
[22] A: I can't recall anything general.
[23] Q: So you can't recall any conversation with
[24] Mr. Hampen as to what they expected you to do?

Page 92

and conditions of any deal other than it would involve all the companies?

A: I think — the only recollection I have of conditions were questions from Hevrony as to whether or not the management was committed to stay with the company.

Q: What was the answer to that?

A: The management that was present was committed. We weren't speaking for anybody else.

Q: And present, you believe, was Brandano, Brantl and you?

A: As I said, there may have been one or two others.

Q: Other than management being committed to stay, was there any other discussion regarding the terms and conditions of a potential deal?

A: I don't recall any.

Q: Was there any discussion about a non-compete?

A: No, I don't believe so.

Q: Did you provide a written summary of this meeting to the board of directors of BBCC?

A: I don't recall.

Q: If you provided such a written summary, I

Page 94

to November 29, as to who were the owners of Hudson Investments?

A: My understanding prior to November 29th was the owners of Hudson were at least Hevrony and Miller. Whether or not there was anybody else, I don't know.

Q: Fair to say you were never an owner of Hudson Investments, correct?

A: No.

Q: Am I correct?

A: You're correct.

Q: Nor was Mr. Brandano?

A: Correct.

Q: Nor Mr. Brantl?

A: Correct.

Q: Nor anyone else, to your knowledge, associated with BBCC?

A: I can't answer that.

Q: I said "to your knowledge."

A: To my knowledge, nobody else.

Q: And you never became an owner in Hudson Investments; is that correct?

A: That's correct.

Q: As I understand it, following the

Page 93

presume — is it a fair assumption that it would still exist?

A: Yes.

Q: Do you recall providing an oral summary to the board of directors, again, other than the persons that were already there?

A: I don't recall.

Q: Do you recall providing an oral summary to Mr. Kramer?

A: I don't recall.

Q: Or to Dr. Kraenzlin?

A: I don't recall.

Q: Was Mr. Miller present at that meeting?

A: Excuse me?

Q: Mr. Miller, Dale Miller.

A: No.

Q: Was there anyone else present connected to Hudson Investments?

A: No.

Q: Did Mr. Hevrony identify any other — or did he identify himself as an owner of Hudson Investments?

A: I don't recall.

Q: Did you ever gain an understanding, prior

Page 95

acquisition, you became a shareholder in the entity now known as BPI; is that correct?

A: That's correct.

Q: And that occurred sometime after November 29, 2002?

A: That's correct.

Q: And do you recall when?

A: Probably December of 2002.

Q: And what percentage at the time of the company did you purchase?

A: Percentage of the time?

Q: At the time.

A: Myself?

Q: Yes.

A: 6 percent.

Q: And do you know what percent Mr. Brantl purchased?

A: 3 percent.

Q: How about Mr. Brandano?

A: I'm sorry, Mr. Brandano is 3 percent.

Q: Mr. Brantl?

A: I think 1 1/2 percent.

Q: And Hudson Investments, do you know what share of ownership it retained?

Page 100

conversations?

[1] Q: That's correct, sir.

[2] A: That's my recollection.

[3] Q: Who did you understand to be negotiating
[4] with the parent regarding the sale for Hudson?

[5] A: My understanding was that it was Miller and
[6] Hevrony.

[7] Q: And who did you understand to be
[8] negotiating the deal on behalf of the seller, the
[9] parent?

[10] A: Kramer would have been one, and I couldn't
[11] affirm it was Dr. Kraenzlin, but I would imagine
[12] Kramer was the point man.

[13] Q: And I take it it's fair to say that neither
[14] you, Mr. Brandano, nor Mr. Brantl were negotiating
[15] the deal; is that correct?

[16] A: That's right.

[17] Q: You were supporting the deal or you were
[18] supposed to support the deal consistent with the
[19] September 25, 2002, letter; is that a fair
[20] characterization?

[21] A: We were providing HIG answers to their
[22] questions on the substances and matters I talked to
[23] you about, and Brinkmann and Hampen, answers to
[24]

Page 102

[1] is your plan — and we have a court reporter and a
[2] videographer. Do you plan to take any break at
[3] all —

[4] MR. BELLO: Sure.

[5] MR. COMEN: — for people to eat something?
[6] Just tell me when.

[7] MR. BELLO: We can probably break in about
[8] 10 or 15 minutes and take a hopefully relatively
[9] shorter break, but it's up to you. 45 minutes?

[10] MR. COMEN: A shorter break would be fine.

[11] Q: Did you provide copies of all
[12] communications that you had with HIG to someone, Mr.
[13] Hampen, Mr. Brinkmann or the parent?

[14] A: My recollection is I copied both sides on
[15] every piece of correspondence that I created.

[16] Q: Do you know if Mr. Brantl provided answers
[17] to questions by HIG?

[18] A: I don't know.

[19] Q: Do you know, if he did, whether he copied
[20] both sides on that information?

[21] A: I don't know.

[22] Q: How about Mr. Brandano; do you know if he
[23] provided information to HIG and its representatives?

[24] A: My recollection is he did.

Page 101

[1] questions that they had.

[2] Q: And did you share — take a step back. The
[3] information and answers to questions that HIG had —
[4] and just for the record, "HIG" we mean as Hudson
[5] Investment Group, correct?

[6] A: Correct.

[7] Q: — that HIG had, did you share — was some
[8] of that in writing, some of those answers?

[9] A: I don't recall.

[10] Q: Do you recall whether there were any
[11] e-mails responding to questions?

[12] A: I don't recall, but it would not have been
[13] unreasonable that there were.

[14] Q: Do you recall whether you had any e-mails
[15] back and forth with Hevrony regarding questions or
[16] information?

[17] A: I don't recall.

[18] Q: Do you know if you did a search in your
[19] computer database to see if you had e-mails back and
[20] forth to Hevrony?

[21] A: That search was done by our IT department,
[22] and those e-mails were produced.

[23] MR. COMEN: I'm hearing someone's stomach
[24] growling. Having in mind that it's after 1:30, what

Page 103

[1] Q: Do you know if he provided that same
[2] information to Mr. Hampen, Mr. Brinkmann, or
[3] represent — other representatives of the parent?

[4] A: My recollection is that he did.

[5] Q: Is there any reason, sitting here, that you
[6] don't know whether Mr. Brantl did so?

[7] A: I just can't recollect.

[8] Q: Did you ever tell Mr. Brantl that it's
[9] important that you keep Hampen and Brinkmann
[10] informed of all information provided?

[11] A: I don't know.

[12] Q: Have you told me everything you can recall
[13] regarding the subject matters in the phone calls
[14] that you had with Mr. Hevrony?

[15] And that is the reaffirmation of the
[16] business plans, the reaffirmation of management to
[17] stay with the company, and the discussion of HIG's
[18] ability to acquire the company quickly.

[19] A: That's the best of my recollection, yes.

[20] Q: So is it fair to say that you don't recall
[21] any discussion with Mr. Hevrony regarding — in
[22] these phone conversations — regarding the subject
[23] of a non-compete?

[24] A: Correct.

Page 116

and Brian Crush?

[2] A: I don't recall it.

[3] Q: And just looking — going back to the cover
[4] page from Ms. Wile, Claus Brinkmann was the — one
[5] of the two individuals in Danvers from the parent
[6] corporation; is that correct?

[7] A: Correct.

[8] Q: Mr. Brandano was your CFO?

[9] A: Correct.

[10] Q: Mr. Hampen was the second individual from
[11] the parent corporation?

[12] A: Correct.

[13] Q: And Mr. Hadar? Who is Mr. Hadar?

[14] A: Mr. Hadar was an attorney with Gadsby &
[15] Hannah.[16] Q: The lawyers representing Hudson Investment;
[17] is that correct?

[18] A: I believe so.

[19] Q: And Mr. Kraenzlin, Dr. Kraenzlin obviously
[20] is here. Mr. Stoler was the main deal lawyer at
[21] Gadsby & Hannah?[22] A: He was one of the two lawyers at Gadsby &
[23] Hannah that worked on the deal.

[24] Q: Representing Hudson Investments?

Page 118

[1] right.

[2] Q: So sometime between October, mid-October

[3] when you first came into contact with Hudson

[4] Investments, and November 29th, you had a couple or
[5] three conversations with Mr. Stoler?

[6] A: Correct.

[7] Q: Do you recall who else was party to those
[8] communications?

[9] A: I don't.

[10] Q: Was anybody else party to the
[11] communications?

[12] A: I would imagine, yes.

[13] Q: Well, I don't want you to guess. Do you

[14] have any member generally — specifically or

[15] generally who was party to those communications?

[16] A: Generally, my recollection is that it would
[17] have been Hadar, Stoler, Brantl, Brandano, and
[18] myself, and perhaps Hevrony. I don't remember.[19] Q: Do you remember the subject matter of any
[20] of those communications?[21] A: It would have been comments to Stoler on
[22] the agreements that were being drafted.[23] Q: Okay. Do you remember whether any of those
[24] comments dealt with the non-compete?

Page 117

[1] MR. COMEN: I object.

[2] Q: You can answer the question.

[3] A: Sorry?

[4] Q: Representing Hudson Investments?

[5] A: I'm not sure. I suppose he did, yes.

[6] Q: And Mr. Crush represented the seller?

[7] A: Yes.

[8] Q: Did you ever have any conversations with
[9] Mr. Stoler?

[10] A: Yes.

[11] Q: When did you have conversations with Mr.
[12] Stoler?

[13] A: I don't recall exactly.

[14] Q: How many conversations did you have with
[15] Mr. Stoler?

[16] A: I'm guessing.

[17] Q: More than two?

[18] A: Maybe not. Maybe three.

[19] Q: Maybe three. Who else was present when
[20] you — this is — let me give a time frame again.[21] Between the insolvency — well, we can probably even
[22] make it tighter. I assume Mr. Stoler first came on
[23] the scene with Hudson Investments?

[24] A: Subsequent to Hudson Investments, that's

Page 119

[1] A: I don't remember.

[2] Q: You have no recollection one way or the
[3] other?

[4] A: That's correct.

[5] Q: Do you remember if any of those comments
[6] related to the promissory notes?

[7] A: I don't recall.

[8] Q: No recollection one way or the other?

[9] A: No recollection.

[10] Q: Did you take any notes during any of those
[11] communications?

[12] A: No.

[13] Q: Were you in a room — was this in person or
[14] by phone?[15] A: My recollection is meetings with Stoler
[16] were face-to-face.

[17] Q: Do you recall where?

[18] A: I don't recall.

[19] Q: Do you recall whether Mr. Brantl or Mr.
[20] Brandano took notes during those —

[21] A: I don't recall.

[22] Q: Do you know if it's a practice of either of
[23] those individuals to take notes during meetings?

[24] A: Yes.

Page 124

17 new. It was the only way I had to get e-mails en
18 route from place to place when I was traveling. So
19 we used jwood@enporion.com to receive messages on
20 the road, although those messages couldn't be opened
21 with the Blackberry — with the Blackberry that I
22 had.

23 Q: Then there is an address — that's Brantl.

24 A: Where are you looking?

25 Q: I stand corrected on that. There is a
26 separate e-mail — it may not be here —

27 powerjim@ — is it aol.com?

28 A: Yes, that's correct.

29 Q: And what is that, sir?

30 A: That's an e-mail address that I created at
31 the time that I signed onto the AOL account. Those
32 days they required you to create an e-mail address
33 and a password. And the user names "jwood" and
34 "jimwood" were both taken.

35 And, as we've discussed earlier, I've been
36 in the power business for a lot of years, so I
37 selected "powerjim" and tried it, and it worked.
38 And so on my AOL e-mail account, I've been using
39 powerjim@aol to represent the fact that I'm in the
40 power business. And it seems that a lot of people

Page 126

11 to him by BBPI or to BBPI by Goodwin Procter?" What
12 entity is being referenced, to your knowledge, by
13 "BBPI"?

14 A: That would have been what we have called
15 previously in this deposition Riley.

16 Q: And what role did Goodwin Procter have, to
17 your knowledge, in connection with BBPI?

18 A: Well, I'm not sure how to answer that
19 question, because this is from Crush, so I don't
20 understand what he means by "by Goodwin Procter to
21 BBPI." I don't know what he means there.

22 Q: What role, if any, did Goodwin Procter have
23 in connection with this transaction at that time,
24 sir?

25 A: We — we, Babcock Power Capital
26 Corporation, used Goodwin Procter from time to time
27 to discuss issues related to the transaction to help
28 us understand the documents that were being created
29 by Gadsby & Hannah. And as I stated earlier, we
30 used Goodwin for business issues preceding this
31 deal.

32 Q: Did Goodwin Procter also provide advice to
33 the managers about the shareholders' agreement?

34 A: They did.

Page 125

11 that know me know that account and they're easy to
12 get ahold of me.

13 Q: Do you recognize the e-mails that are
14 reflected in Exhibit 8, sir?

15 A: No, I don't.

16 Q: Do you recognize, on Page 2, on the face of
17 the document it appears that you're the author of
18 that e-mail; is that correct?

19 A: It looks that way.

20 Q: Do you have any reason to believe that you
21 weren't the author of that e-mail?

22 A: No. I don't have any reason to believe
23 that.

24 Q: Do you know what subject matter is being
25 addressed by this e-mail?

26 A: Apparently acknowledgement of some
27 document.

28 Q: If I suggested that it was the officers'
29 certificate, would that refresh your recollection?

30 A: No.

31 Q: It wouldn't refresh it one way or another?

32 A: That's right.

33 Q: At the top of the first page it says, "What
34 could Kraenzlin have provided that wasn't provided

Page 127

11 Q: And that was advice in their individual
12 capacities, correct?

13 A: What do you mean by that?

14 Q: The individual managers who were about to
15 sign shareholders' agreements as a result of the
16 acquisition; is that correct?

17 A: I don't know.

18 Q: Well, did you understand that Goodwin
19 Procter was providing advice to the entity, when it
20 was providing advice on the shareholders' agreement,
21 or to the individuals?

22 A: It's not a question that I thought about.

23 Q: Did anyone from Goodwin Procter talk to you
24 about that distinction?

25 A: No, not to my recollection.

26 Q: Did anyone suggest that you should get a
27 waiver letter as to Goodwin Procter's advice on this
28 subject matter, having previously represented the
29 company?

30 A: A waiver letter how?

31 Q: A waiver of conflict letter between the
32 individuals who were to be party to the
33 shareholders' agreement and the entity BBCC?

34 A: I don't recall that.